Supreme Court, U.S.
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No. 86-796

IN THE

Supreme Court Of The United States

October Term, 1986

RAYMOND JACKSON,
Petitioner

vs.

NATIONAL BROADCASTING COMPANY; WARNER BROS. TELEVISION; and D.C. COMICS, INC.
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENTS' JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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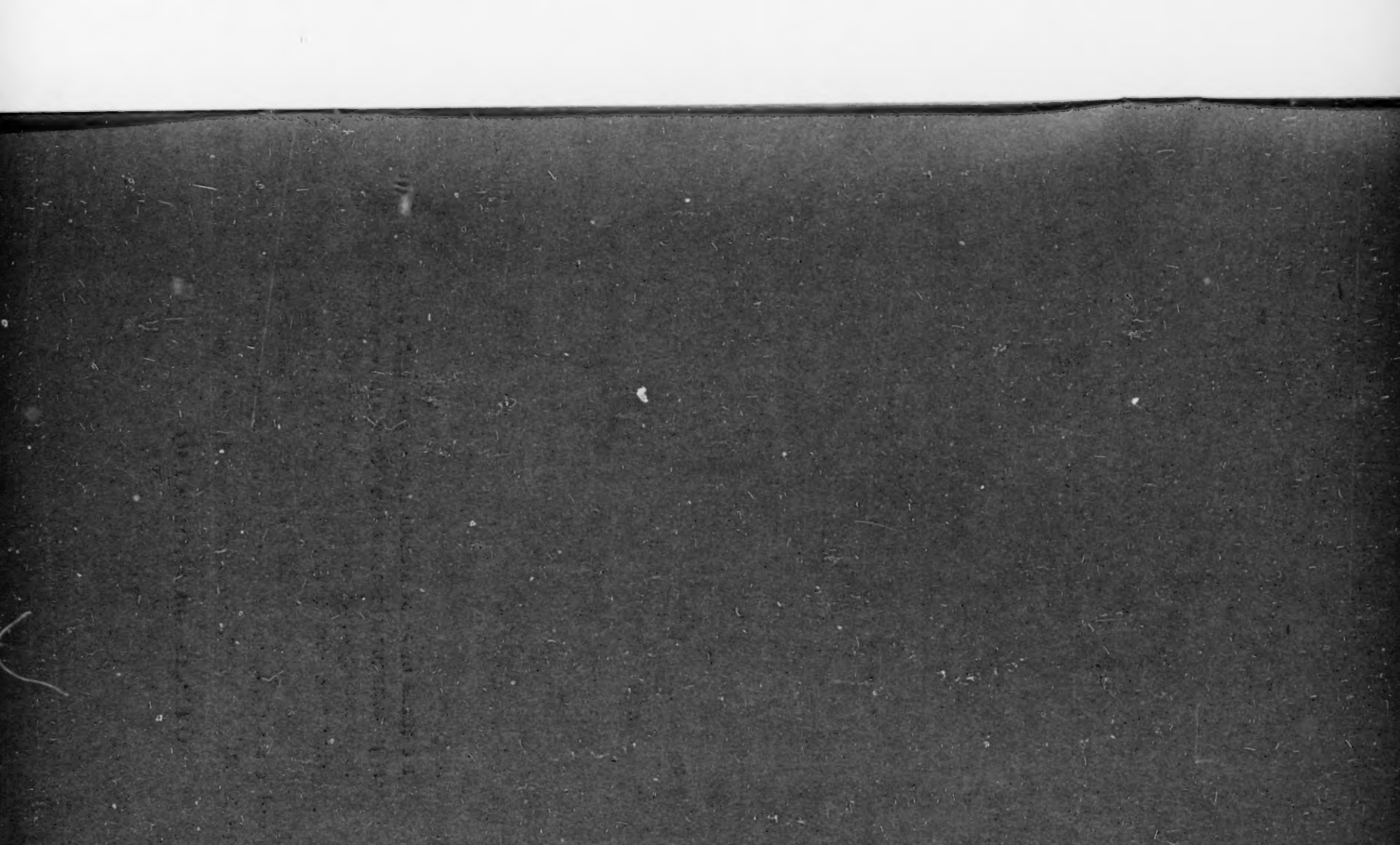

QUESTIONS PRESENTED

1. Whether a writ of certiorari should be granted when the petition was filed ninety-one days following the appeal court's final order?

2. Whether a writ of certiorari may be properly granted regarding an appeals court's *per curiam* decision entered without opinion where absolutely no important issue of law exists, and where such writ would merely serve to grant a review of evidence and specific facts having no impact or importance outside of this case?

PARTIES TO THE PROCEEDING

Parties:

Raymond Jackson
National Broadcasting Company
Warner Bros. Television
D. C. Comics, Inc.

Affiliated or Related Parties:

The parent company for both Warner Bros. Television and D. C. Comics, Inc., is Warner Communications, Inc.

The parent company of National Broadcasting Company, is RCA. RCA has recently been acquired by General Electric Company.

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No. 86-796

IN THE

Supreme Court Of The United States

October Term, 1986

RAYMOND JACKSON,
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vs.

NATIONAL BROADCASTING COMPANY; WARNER BROS. TELEVISION; and D.C. COMICS, INC.
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENTS' JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Plaintiff Raymond Jackson filed a *pro se* complaint in the United States District Court for the Northern District of Alabama on March 19, 1985, naming as defendants Warner Bros. Television ("Warner Bros."), The National Broadcasting Company ("N.B.C."), and The Fireman's Fund Insurance Companies ("Fireman's Fund"). An amended complaint was filed by Jackson's subsequently-retained counsel on May 17, 1985, dismissing Fireman's Fund as a defendant, and adding D.C. Comics, Inc. ("D.C."). The complaints alleged that the

defendants had infringed upon a copyright Jackson claimed in certain drawings of a flying saucer ("the Colossus") made in conjunction with a comic book hero ("Colossal Man") created by Jackson. The alleged infringement came about through the depictions of a fictional flying saucer ("the Mothership") seen in two television movies, entitled "V-The Visitors" and "V-The Final Battle," and in a "V" comic book series. Warner Bros. produced the television movies and N.B.C. broadcast them. D.C. published the "V" comic books. Jackson alleged that the defendants had copied his designs from Colossal Man drawings he had provided to two N.B.C. employees, Rebecca Sobel and Emily Boxer. Sobel was an N.B.C. News Correspondent in Pittsburgh. Boxer was the "Book Coordinator" for N.B.C.'s "Today Show."

On June 11, 1985, Jackson's attorney filed a motion for leave to withdraw as counsel, which the district court denied. A renewed motion to withdraw was filed on June 20, 1985. Motions for Summary Judgment were filed on behalf of all the defendants on June 21, 1985, the date scheduled by the district court for a pre-trial conference. At this conference, the court heard Jackson's attorney's motion to withdraw and took it under advisement. Jackson attorney was granted leave to withdraw by order of the court dated June 25, 1985, and Jackson has acted as *pro se* counsel since that time. That same order set out that the defendants' motion for summary judgment would be taken under submission on July 5, 1985, on the affidavits and other materials submitted by any party by that date.

The defendants' motions were supported by affidavits submitted by Sobel and Boxer which set out that neither had supplied Jackson's materials to any other N.B.C. or Warner Bros. personnel, and that each had thrown the materials away. An affidavit submitted by independent television producer and California native Kenneth Johnson set out that he conceived of, created, wrote, and directed the original "V" movie for Warner Bros. Johnson affirmed that the design of the "V" mothership was the result of a collaboration between himself and the late Charles Davis, who had been Johnson's production

designer. Johnson stated that neither he nor Davis had had any access to Jackson's work nor any contact with Sobel or Boxer.

Because signed and notarized affidavits had not been received from Sobel and Johnson on June 21, 1986, their unsigned and unnotarized affidavits were submitted along with the motions for summary judgment; the motions warranted that fully executed affidavits would be submitted in a timely manner. Signed affidavits were submitted on July 5, 1986, the submission date set by the district court. Jackson submitted no affidavits or other evidence in opposition to the motions made by defendants.

The district court entered summary judgments on behalf of all the defendants by an order of August 12, 1985, accompanied by a memorandum opinion. (App. A) Jackson filed Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit on September 6, 1985. On appeal, Jackson alleged, via various motions and briefs, that the district court opinion was based on unsigned and untruthful affidavits. Apparently, after it became clear that the signed affidavits were timely filed and in the record, Jackson then alleged that the affidavits had been surreptitiously placed in the record via various alleged conspiracies between defendants' counsel and personnel in the clerk's offices of the trial court and the appeals court. The Eleventh Circuit affirmed the district court's decision, without opinion, in a *per curiam* decision on April 23, 1986. (App. B) Jackson's Petition for Rehearing and Suggestion for Rehearing *en banc* was denied by the Eleventh Circuit on June 3, 1986. (App. C) Jackson's petition for writ of certiorari was docketed by the Clerk of this Court on September 2, 1986.

ARGUMENT

I. Jackson's Petition for Writ of Certiorari Was Untimely Filed and May Not Be Granted.

The Eleventh Circuit's *per curiam* opinion, was entered April 23, 1986. Jackson's Petition for Rehearing and Suggestion for Rehearing En Banc was denied June 3, 1986. Jackson's original Petition for Writ of Certiorari was filed on September 2, 1986. It did not conform to the standards set by the Rules of this Court. Sup. Ct. R. 33. In conformance with the rules, the Clerk informed Jackson that if new and proper copies of his petition were promptly substituted, the petition would be deemed filed as of September 2, 1986. Sup. Ct. R. 33.7. Further petitions were submitted in October 1986. These were also returned by the Clerk. Corrected petitions were finally submitted November 24, 1986, and were deemed filed as of September 2, 1986.

Supreme Court Rule 20.2 and 28 U.S.C. § 2101 (c) provide that a writ of certiorari must be requested by filing within ninety days after the entry of the final decree or judgment. Jackson's first application was filed ninety-one days following the Eleventh Circuit's final order. Accordingly, it was jurisdictionally late and the Clerk should have refused to receive the petition. Sup. Ct. R. 20.3. The petition may have been docketed due to the fact that Jackson's petition completely omits the date the final order was entered. The Rules of this Court provide:

> While making due allowance for any case presented under this Rule by a person appearing *pro se*, the Clerk will refuse to receive any document sought to be filed that does not comply with the substance of these Rules, or when it appears that the document is obviously and jurisdictionally out of time.

Sup. Ct. R. 46.3. This Court is without jurisdiction, and the petition should be denied.

II. The Case Involves No Important Issues of Law Which Require this Court's Review but Only Involves Questions of Evidence and Specific Facts Properly Determined Below.

This case does not present any "special and important reasons" compelling this Court's review. *See* Sup. Ct. R. 17. The case involves only issues of fact and evidence that two previous courts have determined fail to state a claim of copyright infringement. Jackson's fanciful assertions regarding evidence-tampering, conspiracy theories, and forgeries are not properly before this Court and simply do not merit this Court's review.

This Court has long ago stated that a grant of certiorari is not warranted "merely to review the evidence or draw inferences from it." *General Talking Pictures Corporation v. Western Electric Company,* 304 U.S. 175, 178 (1938); *accord., United States v. Johnston,* 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts.").

Moreover, a decision from this Court could have no possible effect on any other case and cannot benefit the public at large. "Certiorari is granted only in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties. . . ." *N.L.R.B. v. Pittsburgh S.S. Co.,* 340 U.S. 498, 502 (1951).

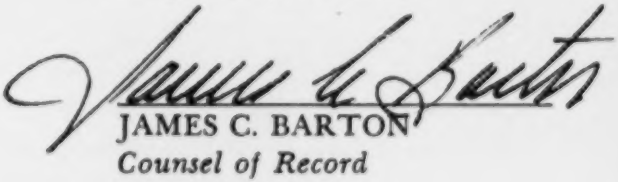
Finally, the case below was properly and fairly decided according to well-settled principles of law and procedure. The district court's opinion relied on the controlling precedent in the Eleventh Circuit, *Ferguson v. National Broadcasting Co.,* 584 F. 2d 111, 113 (5th Cir. 1978). *Ferguson* held that in order for a copyright plaintiff to prove that a defendant had "access" to plaintiff's work, he must prove a "reasonable possibility of access — not a bare possibility. . . ." *Id.* at 113. The *Ferguson* case also held that summary judgment was proper where defendant's evidence negates any reasonable possibility of such access. Because there is no evidence in this case to rebut defendants' proof that the creator of its designs had no access to Jackson's

materials, the district court properly concluded that only a bare possibility of such access existed and that summary judgment was due to be granted. Fed. R. Civ. P. 56(e). The district court did not consider Jackson's assertions of evidence-tampering, forgeries, or conspiracies. These issues were not properly before the appeals court, nor were they considered. The Eleventh Circuit affirmed the district court without opinion, indicating thereby that the summary judgment was supported by the record and that no error of law appeared. *See* 11th Cir. R. 25. No issues exist for this Court's review.

CONCLUSION

For the foregoing reasons, Jackson's Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit should be denied.

Respectfully submitted,



JAMES C. BARTON
Counsel of Record
for Respondents

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Respondents' Joint Brief in Opposition to Petition for Writ of Certiorari was served upon Petitioner *pro se,* Raymond Jackson, 7200 Westmoreland Drive, Fairfield, Alabama 35064, by depositing the same in the United States mail, first class postage prepaid, this 29th day of December, 1986.

Counsel of Record
for Respondents

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RAYMOND JACKSON,	)	
PLAINTIFF	)	
VS.	)	CIVIL ACTION NO. 85-AR-0826-S
NATIONAL BROADCASTING COMPANY, INC., et al.,	)	
DEFENDANTS	)	

ORDER GRANTING SUMMARY JUDGMENT

In conformity with the accompanying Memorandum Opinion, the court expressly determines that there exists no genuine issue of material fact and that defendants are entitled to judgment as a matter of law. It is therefore

ORDERED, ADJUDGED and DECREED that defendants' motions for summary judgment are GRANTED. JUDGMENT is ENTERED in favor of defendants and against plaintiff, and plaintiff shall have and recover NOTHING of defendants.

Costs are taxed against plaintiff.

DONE this 13th day of August, 1985.

/s/ WILLIAM M. ACKER, JR.

William M. Acker, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RAYMOND JACKSON,	)	
PLAINTIFF	)	
VS.	)	CIVIL ACTION NO. 85-AR-0826-S
NATIONAL BROADCASTING COMPANY, INC., et al.,	)	
DEFENDANTS	)	

MEMORANDUM OPINION

Defendants, National Broadcasting Company, Inc. (NBC), Warner Brothers Television (Warner), and D.C. Comics (D.C.), separately move this court to grant summary judgment in their favor according to Rule 56, F.R.Civ.P. In order to obtain a favorable ruling defendants must satisfy the court that there is no genuine issue of any material fact based on the affidavits of Kenneth Johnson, Roger Greenberger, Rebecca Sobel, Emily Boxer, the deposition of plaintiff, Raymond Jackson himself, and the pleadings.

STATEMENT OF UNDISPUTED FACTS

On September 24, 1981, Jackson obtained a certificate of copyright registration on a graphic art design consisting of a depiction of a spaceship. Jackson entitled this spaceship "Colossus". Colossus is the spaceship used by a proposed comic book hero named "Colossal Man". Jackson also developed the idea of Colossal Man.

At the time Jackson developed these ideas about Colossal Man he was a resident of Columbus, Ohio. His hometown newspaper ran a story concerning Jackson and his Colossal

Man. One of the national wire services picked up the story. Rebecca Sobel, an NBC news correspondent in Pittsburgh, Pennsylvania, read the story from the wire service and contacted Jackson about the possibility of doing a story on him. After speaking with Jackson on the telephone, Sobel determined not to do the story on Colossal Man. Following their telephone conversation, Jackson nevertheless sent some of the Colossal Man material to Sobel.

In an attempt to promote Colossal Man, Jackson then went to New York City. On September 30, 1981, he went to the NBC studios and talked with Emily Boxer. Boxer was the Book Coordinator for NBC's "Today Show". Her job was to schedule and to arrange for authors to appear on the "Today Show" so as to promote their works. After the interview, Boxer stated that she could not arrange anything for Jackson. He nevertheless left some of his Colossal Man material with Boxer before he departed. Jackson did not talk to anyone else at NBC about his Colossal Man, nor did he talk to anyone associated with the other defendants.

Later NBC aired a television movie, mini-series, and series "V" about certain aliens invading Earth. These aliens travelled in spaceships, one of which was the "Mothership". Warner produced the shows and D.C. later obtained rights to publish a comic book series concerning the same characters as were in the movie, etc.

Jackson argues that the design of the "V" Mothership was actually his copyrighted design of Colossus. He brings this suit against NBC, Warner, and D.C. for the alleged infringement of his copyrighted design.

Defendants say flatly that the design of "Mothership" originated with Kenneth Johnson and Charles Davis, who were employed by Warner to work on the movie.

THE APPLICABLE LAW

To establish copyright infringement, plaintiff must prove (1) his ownership of the copyright, and (2) "copying" by a defendant, or by a person who worked for a defendant. *Fergu-*

son v. National Broadcasting Co., 584 F.2d 111, 113 (5th Cir. 1978), *citing* 3 M. Nimmer, Copyright §§ 13.01 and 13.02[A] (1978). Viewing the evidence in the light most favorable to plaintiff, as the court must for purposes of considering defendants' motions for summary judgment, the court concludes that Jackson has ownership of the copyright. Thus the court turns its attention to the second prong of the test.

Since there is usually no direct evidence of "copying", the law realistically allows a plaintiff to meet his burden of proof of this element by demonstrating that the person who did the work for the defendant had access to the copyrighted work and that the defendant's work is substantially similar to the plaintiff's. *Ferguson*, 584 F.2d at 113. "Access has been defined to include an opportunity to view the copyrighted work". *Id. citing* 3 M. Nimmer, Copyright § 13.02[A] (1978).

In defense of defendants' Rule 56 motions plaintiff relies heavily on *Smith v. Little, Brown & Co.*, 245 F.Supp. 451 (S.D. N.Y. 1965). *Little, Brown* may or may not express the law of the Eleventh Circuit. *Little, Brown* concerned an alleged copyright infringement by Edith Meyer of Smith's unpublished work in Meyer's published book *Pirate Queen*. Both works concerned stories about a 16th century Irish "pirate queen" named Grania O'Malley. Smith had previously submitted her manuscript to Little, Brown. Her manuscript was read and considered for publication but eventually was rejected by Little, Brown. Helen Jones, an editor of Little, Brown, was a friend of Meyer's. Jones was aware of the previous work written by Smith. Jones urged Meyer to write a book about Grania O'Malley. Meyer eventually did write the book. After the publication of *Pirate Queen*, Smith brought her complaint alleging copyright infringement. The district court, in its opinion, pointed to several similarities between the two authors' works. Although the tales in both books involved different original and unique ideas, the court found that the two were substantially similar. Additionally the court found that access existed, because Jones had access to Smith's work and Meyer had access

to Jones. *Id.* at 458. Based on these findings the court found for the plaintiff, Smith.

The case *sub judice* is readily distinguishable from *Smith v. Brown, Little.* The overall concept of the Colossus spaceship is certainly not unique. This court has seen a thousand similarly shaped space vehicles in the past 40 years. The Colossus is no more than a circular disc shape common to many spaceship designs of the past, of the present, and probably of the future. Jackson even admits that his Colossus spaceship is not identical to the "V" Mothership. Rather, he claims that his "overall" design and concept was used. The fact that the "V" Mothership is also shaped in a circular disc fashion does not suffice to make out a prima facie case and to support Jackson's suspicion.

Jackson asserts that NBC, and subsequently the other defendants, obtained access to his Colossus design as a result of his leaving copies of Colossus with both Sobel and Boxer. However, Sobel and Boxer in their uncontradicted affidavits swear that they did not even retain the Colossal Man material given them by Jackson. Furthermore, Kenneth Johnson, co-designer of the "V" Mothership swears that neither he nor his partner received any help whatsoever in designing the spaceship. Johnson's partner, Charles Davis, died earlier this year. Jackson simply fails to offer any direct evidence to contradict any of these sworn statements, and Jackson's circumstantial evidence is not enough to make out a prima facie case in light of the requirements that this court take an intelligent look at the copyrighted material itself and take judicial notice of the fact that a copyright is not extremely difficult to obtain and cannot be thought to protect against every similarity, especially when the design concept does not, by any stretch of the imagination, constitute any kind of creative "break through". If defendants had used the name "Colossus" instead of Mothership, perhaps the story would be different, but then, perhaps not, inasmuch as the word "Colossus" can be found in any dictionary. If Colossus would actually fly into space and its engineering concept had

been patented, the case would, of course, be an entirely different case.

To find that defendants had "access" to Jackson's copyrighted spaceship, this court would have to assume (1) that Sobel or Boxer lied and did not throw away the spaceship design but, rather, gave it to someone else at NBC, and (2) that Kenneth Johnson lied when he stated that he and his partner had no assistance in designing the "V" Mothership. This court is unwilling to conclude that either of these assumptions is true, much less that both are true. If the court should allow a jury to find "access", the finding would necessarily be based on impermissible speculation or conjecture. *Ferguson,* 584 F.2d at 113. "To support a finding of access there must be a reasonable possibility of access — not a bare possibility. . . ." *Id.* This court finds no such "reasonable possibility".

Plaintiff's former counsel not only worried about her inability to relate to Jackson as his attorney, but she worried about the implications inherent in Rule 11, F.R.Civ.P. The court tends to agree that Jackson's claim is without colorable merit and consists very largely of grandiose wishful thinking. In sum, the case is one better designed for disposition under Rule 56 than Jackson's spaceship is designed for space flight.

The court will grant defendants' motions for summary judgment by separate order.

DONE this 13th day of August, 1985.

/s/ WILLIAM M. ACKER, JR.

William M. Acker, Jr.
United States District Judge

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 85-7580
Non-Argument Calendar

D.C. Docket No. 85-0826

RAYMOND JACKSON,

Plaintiff-Appellant,

versus

NATIONAL BROADCASTING COMPANY, INC., WARNER BROTHERS TELEVISION; and D. C. COMICS, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(April 23, 1986)

Before GODBOLD, Chief Judge, HILL and ANDERSON, Circuit Judges.

PER CURIAM:

AFFIRMED. See Cir. R. 25.[1]

"Costs taxed against plaintiff-appellant."

Judgment Entered: April 23, 1986
For the Court: Spencer D. Mercer, Clerk
By: /s/ WARREN A. GODFREY
Deputy Clerk

ISSUED AS MANDATE: June 18, 1986.

[1]Appellant's motion to supplement the record is GRANTED. Appellees' motion to dismiss the appeal is DENIED as moot. Appellant's motion for leave to file an amended complaint of evidence on the file of the records in the Eleventh Circuit is DENIED.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 85-7580

RAYMOND JACKSON,

Plaintiff-Appellant,

versus

NATIONAL BROADCASTING COMPANY, INC., WARNER BROTHERS TELEVISION; and D. C. COMICS, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion April 23, 11 Cir., 1986, ... F.2d .....).
(June 3, 1986)

Before GODBOLD, Chief Judge, HILL and ANDERSON, Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ R. L. ANDERSON

United States Circuit Judge

APPENDIX D

Statutes and Rules

28 U.S.C. § 2101. Supreme Court; time for appeal or certiorari; docketing; stay

•••

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend time for applying for a writ of certiorari for a period not exceeding sixty days.

Sup. Ct. R. 17. Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal

question in a way or conflict with applicable decisions of this Court.

Sup. Ct. R. 20. Review on certiorari — time for petitioning

•••

.3. The Clerk will refuse to receive any petition for a writ of certiorari which is jurisdictionally out of time.

Sup. Ct. R. 33. Form of jurisdictional statements, petitions, briefs, appendices, motions, and other documents filed with the court

•••

.7. The Clerk shall not accept for filing any document presented in a form not in compliance with this Rule, but shall return it indicating to the defaulting party wherein he has failed to comply: the filing, however, shall not thereby be deemed untimely provided that new and proper copies are promptly substituted. If the Court shall find that the provisions of this Rule have not been adhered to, it may impose, in its discretion, appropriate sanctions including but not limited to dismissal of the action, imposition of costs, or disciplinary sanction upon counsel. See also Rule 38 respecting oral argument.

Sup. Ct. R. 46. Proceedings in forma pauperis

•••

.3. All papers and documents presented under this Rule shall be clearly legible and should, whenever possible, comply with Rule 39. While making due allowance for any case presented under the Rule by a person appearing *pro se*, the Clerk will refuse to receive any document sought to be filed that does not comply with the substance of these Rules, or when it appears that the document is obviously and jurisdictionally out of time.

Fed. R. Civ. P. 56. Summary Judgment

•••

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposting affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all pages or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

11th Cir. R. 25. Affirmance without opinion.

When the court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erroneous;
(b) the evidence in support of a jury verdict is not insufficient;
(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;
(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

and the court also determines that no error of law appears and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.